



PUBLIC NOTICE

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Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Telecommunications and Analysis Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

Acceptability for Filing Public Notice: Application filed by Telxius Cable USA, Inc., Telxius Cable Puerto Rico, Inc., and Telefonica International Wholesale Services America, S.A. (together, the "Applicants") for a license to land and operate a non-common carrier fiber-optic submarine cable network connecting Virginia Beach, Virginia; San Juan, Puerto Rico; and Fortaleza and Rio de Janeiro, Brazil (BRUSA cable system). The Application was placed on Public Notice on May 31, 2016. File No. SCL-LIC-20160330-00011, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00182S (IB, May 31, 2016). On July 1, 2016, Telefonica International Wholesale Services USA, Inc. notified the Commission of its name change to Telxius Cable USA, Inc. On July 8, 2016, Telefonica International Wholesale Services Puerto Rico, Inc. notified the Commission of its name change to Telxius Cable Puerto Rico, Inc. On September 21, 2016, the Applicants filed a Landing Point Notification with location details and a map regarding the Virginia Beach, Virginia cable landing station and beach landing points for the BRUSA cable system. Applicants filed a Supplement to the Application on April 20, 2017, clarifying ownership, control, and operation of the Virginia Beach cable landing station. Applicants were granted Special Temporary Authority (STA) to construct, connect the end points, and test at their own risk those portions of the BRUSA cable system in U.S. territory prior to receiving Commission authorization. File No. SCL-STA-20170712-00017.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. §1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://www.state.gov/r/pa/prs/ps/2001/6951.htm>. The Department of Homeland Security (DHS), with the concurrence of the Department of Justice and the Department of Defense (DOD; collectively, the "Agencies"), filed a Petition to Adopt Conditions to Authorizations and Licenses on August 4, 2017 (dated Aug. 3, 2017). The Agencies have no objection to the Commission approving authority to construct, land, and operate the BRUSA cable system, provided that the Commission conditions its approval on the commitment of Telxius Cable USA, Inc. to abide by the undertakings set forth in the July 30, 2017, "Letter of Assurances" from Telxius Cable USA, Inc. to DHS and DOD.

Actions Taken: (1) Grant of Cable Landing License to Telxius Cable USA, Inc., et al. for the purpose of constructing, landing and operating a private fiber-optic submarine cable network, the BRUSA cable system, connecting Virginia Beach, Virginia; San Juan, Puerto Rico; and Fortaleza and Rio de Janeiro, Brazil, and (2) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed on August 3, 2017, by the Department of Homeland Security, with the concurrence of the Department of Justice and the Department of Defense Agencies.

Licensee Information: The Applicants for the cable landing license for the BRUSA cable system are the following: (1) Telxius Cable USA, Inc. (Telxius Cable USA), (2) Telxius Cable Puerto Rico, Inc. (Telxius Cable Puerto Rico), and (3) Telefonica International Wholesale Services America, S.A. (TIWS America).

Telxius Cable USA, a Florida company, and Telxius Cable Puerto Rico, a Puerto Rico company, are direct wholly-owned subsidiaries of TIWS America, a Uruguay company. The Applicants, in turn, are wholly-owned, on an indirect basis, by Telefonica, S.A., a Spanish company whose shares are traded publicly on the Madrid Stock Exchange. No other person or entity has a 10% or greater direct or indirect equity or voting interest in any of the Applicants.

Cable Design and Capacity: The BRUSA cable system will consist of eight fiber pairs with a total design capacity of 108 terabits per second (Tbps), or 13.5 Tbps per fiber pair, and will have a total length (trunk plus spurs) of approximately 11,200 kilometers. The main trunk of the cable system will consist of four "express route" fiber pairs connecting the newly constructed cable landing station located at Virginia Beach, Virginia to an existing cable landing station located at Rio de Janeiro, Brazil. Two more fiber pairs will connect the new Virginia Beach, Virginia, cable landing station to the existing cable landing stations located at San Juan, Puerto Rico and Rio de Janeiro, Brazil. The remaining two fiber pairs will connect the new Virginia Beach, Virginia cable landing station to the existing cable landing stations at Fortaleza and Rio de Janeiro, Brazil. Each fiber pair will have an initial capacity of 1 Tbps per fiber pair.

Ownership of the Cable System and Landing Points: (1) Telxius Cable USA will own and control the new cable landing station located at Virginia Beach, Virginia, and the portion of the BRUSA wet segment in the U.S. territorial sea extending from Virginia Beach, Virginia, (2) Telxius Cable Puerto Rico will own and control the existing cable landing station located at San Juan, Puerto Rico, and will own that portion of the BRUSA wet segment in the U.S. territorial sea extending from San Juan, Puerto Rico, (3) Telefonica International Wholesale Services Brasil Limitada (TIWS Brazil), a Brazil company, will own and control the existing cable landing stations located at Fortaleza and Rio de Janeiro, Brazil, and will own those portions of the BRUSA wet segment in the Brazilian territorial sea extending from Fortaleza and Rio de Janeiro, Brazil, and (4) TIWS America will own those portions of the BRUSA wet segment in international waters, beyond the U.S. and Brazilian territorial seas.

Regulatory Status of the Cable: The Applicants propose to operate the BRUSA cable system on a non-common carrier basis. They state that BRUSA's new landing point in Virginia will increase route diversity and minimize the risk that a single natural disaster or other event will disrupt all communications on U.S.-South American routes, since other cables land in Florida or New Jersey. Further, the Applicants claim that BRUSA will compete with the planned Seabras-1 and Monet cable systems, and will provide low latency connectivity on a route where capacity demand is increasing each year and existing systems, such as the SAM-1, South American Crossing, and Americas-II, are nearing the end of their useful lives. Application at 2. The Applicants state that they will sell bulk capacity to particular enterprise and government customers pursuant to individually-negotiated indefeasible rights-of-use (IRUs) and capacity leases, the terms of which will vary depending on the characteristics and needs of the particular capacity purchaser. Application at 1-2.

Applicants have provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C. Cir. 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22202-22203, paras. 69-70; Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67 (2000).

Conditions and Requirements: Applicants will comply with the routine conditions set out in 1.767(g)(1)-(14) of the Commission rules, 47 C.F.R. § 1.767 (g)(1)-(14), and with the requirements of section 1.768 of the Commission's rules, § 1.768 (Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier).

Telxius Cable USA, Telxius Cable Puerto Rico, and TIWS America are affiliated with a foreign carrier that is presumed to have market power in Brazil. Telxius Cable USA, Telxius Cable Puerto Rico, and TIWS America each agree to accept and abide by the reporting requirements in section 1.767(l), 47 C.F.R. § 1.767(l), for the U.S.-Brazil route.

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on August 4, 2017 (dated Aug. 3, 2017) by the Department of Homeland Security (DHS), with the concurrence of the Department of Justice and the Department of Defense (DOD). Accordingly, we condition grant of the application on Telxius Cable USA, Inc. abiding by the commitments and undertakings contained in the July 30, 2017 letter from Guillermo Cañete, President, Telxius Cable USA, Inc., to the Assistant Secretary for Policy, DHS, Department of Defense Chief Information Officer, and the General Counsel, Defense Information Systems Agency (2017 LOA). A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission. A copy of the Petition and the 2017 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20160330-00011 and accessing "Other filings related to this application" from the Document Viewing area.
